IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 151 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARDAR PATEL EDUCATION TRUST

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 151 of 2002

MR HJ NANAVATI for Petitioner No. 1-2

MR LB DABHI A.G.P. for Respondent No. 1-2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. The petitioners have by way of this petition approached this Court against the inaction on the part of the respondents in not releasing the first and second

installments of the grant payable to the petitioner college for the year 2000-2001.

2. I have heard the learned advocates for the respective parties and have perused the relevant record. From the record, it appears that the petition was subsequently amended and the amendment was carried out by the petitioner college, whereby the petitioner college has placed on record the order dated 19th March, 1999, passed by the Tribunal in Application No. 102 of 1989 whereby, the Tribunal has directed respondent nos. 1 to 4 to pay to the applicant the salary with all consequential benefits for the period from 1st August, 1986 to 13th August, 1989 within a period of two months from the date of the receipt of this order. Inspite of that one Shri S.S. Sabuwala, I/c. Deputy Director (A/cs.) Office of Commissioner of Higher Education has filed reply on 19th April, 2002, wherein in para 8 it has been stated as under :-

> "8. I say and submit that the Government has to recover Rs.1,77,676=00 from the grant which is payable to the petitioner trust because the respondent no. 3 viz. Shri Suresh N. Bhatt has been wrongly paid unrecognized salary and allowances under the direction of the Hon'ble Tribunal. Moreover, another audit recovery of Rs.15,435=00 for the year 1994-95 to 1996-97 is also required to be recovered from the petitioner trust by the Government. Therefore, there is total recovery of Rs.2,20,753=00 against the petitioner trust and, therefore, the recovery is more than the grant payable to the petitioner trust for the year 2000-2001. Therefore, the Government has rightly not paid the grant to the petitioner trust by taking lawful stand which is prima facie tenable and sustainable in the eye of law and the same is proper and reasonable. Therefore, the prayer prayed by the petitioner cannot be granted in the interest of justice."

3. In my opinion, the affidavit is contrary to the decision of the Tribunal. Further the said decision could have been also challenged by respondent no. 4 namely Commissioner for Higher Education, but the same is not challenged. Moreover, respondent no. 4 was served,

inasmuch as from the decision of the Tribunal it is clear that respondent no. 4 has appeared and filed their remarks.

4. In that view of the matter, the Government could not have withheld the grant for the payment to the concerned employee namely the applicant before the Tribunal respondent no. 3 herein. Moreover, an amount of Rs.1,77,676=00 withhold by the State Government is not justified in view of the fact that respondent no. 3 herein, is covered under the Direct Payment Scheme and ultimately, the Government has to bear expenses of the salary of the teacher.

5. In the premises aforesaid, order dated 27th November, 2000 at annexure-B, relating to N.S. Patel Arts College, is quashed and set aside. The respondent no. 2 shall release the grant of the petitioner qua payment of salary of respondent no. 3 and shall pay grant with next installment which is due and payable in favour of the petitioners. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/